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IN THE
COURT OF APPEALS OF INDIANA

MARY CALICO,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 89A04-0512-CV-711
	)	
KENNETH WEDIG, M.D.,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable Gregory A. Horn, Judge
Cause No. 89D02-0403-CT-008

September 25, 2006

MEMORANDUM OPINION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-plaintiff Mary Calico appeals the trial court's grant of summary judgment in favor of appellee-defendant Kenneth Wedig, M.D. regarding her claim for medical malpractice that she brought against him. Specifically, Calico contends that summary judgment for Dr. Wedig was error because the designated evidence established that it is "common knowledge" to a juror that Dr. Wedig's conduct fell below the applicable standard of care, and no expert testimony was required to establish that fact. Appellant's Br. p. 4-5. Calico also maintains that summary judgment was improper because she established a presumption of negligence under the doctrine of res ipsa loquitur, inasmuch as the designated evidence established that her injury was one that normally does not occur in the absence of negligence. Concluding that summary judgment was properly entered for Dr. Wedig, we affirm the judgment of the trial court.

FACTS

On March 7, 2002, Calico went to the emergency room at Reid Hospital (the Hospital) in Richmond to have a cast removed from her forearm. Dr. Wedig, the attending physician at the Hospital, has been licensed to practice medicine since 1994 and is board-certified in emergency medicine. During the procedure, Dr. Wedig used a cast-cutting saw that is specifically designed to not cut skin. The saw's "blade" does not spin or rotate. Appellant's App. p. 174-75. Rather, the saw that Dr. Wedig used vibrated back and forth horizontally on the surface of the cast.

At some point during the procedure, Calico complained to Dr. Wedig that the saw was cutting into her skin. Dr. Wedig stopped and placed the saw on his own arm to demonstrate

that the type of saw he was using does not cut skin when it is used properly. Dr. Wedig advised Calico that the saw does sometimes cause frictional heat, which might be what she was experiencing. Dr. Wedig then placed the saw back on Calico's cast and completed the procedure. After the cast was removed from Calico's forearm, she noticed a seven-inch long laceration on her forearm, and claimed that this injury had been caused by Dr. Wedig's negligent use of the saw.

On March 5, 2004, Calico filed a complaint against Dr. Wedig for medical malpractice, claiming that he was negligent in removing the cast.[1] Thereafter, Dr. Wedig moved for summary judgment on June 16, 2005, and presented an affidavit purportedly establishing that he satisfied the standard of care in his treatment of Calico. Moreover, Dr. Wedig asserted that unless Calico could produce contradictory expert testimony to rebut that evidence, "no issue would remain for trial consideration." Appellant's App. p. 20. Calico presented no such evidence, and following a hearing on October 25, 2005, the trial court granted Dr. Wedig's motion for summary judgment. Calico now appeals.

DISCUSSION AND DECISION

I. Standard of Review

On appeal from the grant or denial of a motion for summary judgment, our standard of review is the same as that of the trial court: summary judgment is appropriate only where the evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); Am. Home Assurance Co. v. Allen, 814

[1] Calico also filed an action against the Hospital, which is not a party to this appeal.

N.E.2d 662, 666 (Ind. Ct. App. 2004). A party seeking summary judgment bears the burden of making a prima facie showing that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law. Tack's Steel Corp. v. ARC Constr. Co., Inc., 821 N.E.2d 883, 888 (Ind. Ct. App. 2005). Once the moving party satisfies this burden through evidence designated to the trial court pursuant to Trial Rule 56, the nonmoving party may not rest on its pleadings, but must designate specific facts demonstrating the existence of a genuine issue for trial. Id. Neither the trial court nor the reviewing court may look beyond the evidence specifically designated to the trial court. Best Homes, Inc. v. Rainwater, 714 N.E.2d 702, 705 (Ind. Ct. App. 1999). The court must accept as true those facts alleged by the nonmoving party, construe the evidence in favor of the nonmovant, and resolve all doubts against the moving party. Shambaugh & Son, Inc. v. Carlisle, 763 N.E.2d 459, 461 (Ind. 2002). On appeal, the trial court's order granting or denying a motion for summary judgment is cloaked with a presumption of validity. Sizemore v. Erie Ins. Exch., 789 N.E.2d 1037, 1038 (Ind. Ct. App. 2003). The party appealing from an order granting summary judgment has the burden of persuading us that the decision was erroneous. Id. at 1038-39. Finally, while summary judgment is generally inappropriate in negligence actions, a defendant may obtain summary judgment by showing undisputed material facts that negate at least one element of the plaintiff's claim. Muex v. Hindel Bowling Lanes, Inc., 596 N.E.2d 263, 265 (Ind. Ct. App. 1992).

II. Calico's Claims

A. The Need for Expert Testimony

Calico first contends that the trial court improperly granted Dr. Wedig's motion for summary judgment in light of her failure to present any expert testimony establishing the methods and risks that are associated with a physician's removal of casts. In essence, Calico argues that no expert testimony was required in these circumstances because a reasonable juror using his or her "common sense and knowledge" could conclude that Dr. Wedig was negligent. Appellant's Br. p. 4.

In addressing this issue, we note that medical malpractice cases are no different from other kinds of negligence regarding what must be proven. Bader v. Johnson, 732 N.E.2d 1212, 1216-17 (Ind. 2000). To establish a medical malpractice claim, the plaintiff must prove that: (1) the defendant owed her a duty, (2) the defendant breached the duty by allowing his conduct to fall below the applicable standard of care, and (3) the defendant's breach of duty proximately caused the plaintiff's injury. Id. at 1217. Also, a physician must exercise that degree of care, skill, and proficiency exercised by reasonably careful, skillful, and prudent practitioners in the same class to which he belongs, acting under the same or similar circumstances. Vergara v. Doan, 593 N.E.2d 185, 187 (Ind. 1992). The mere fact that an injury occurred generally does not give rise to a presumption of negligence. Gold v. Ishak, 720 N.E.2d 1175, 1180 (Ind. Ct. App. 1999). And negligence cannot be inferred from any unfortunate result or consequence of medical treatment. Narducci v. Tedrow, 736 N.E.2d 1288, 1292 (Ind. Ct. App. 2000).

Generally, the plaintiff must present expert testimony to establish that the physician's

performance fell below the applicable standard of care. Widmeyer v. Faulk, 612 N.E.2d 1119, 1122 (Ind. Ct. App. 1993). The failure to come forward with expert testimony will usually subject the plaintiff to a summary disposition. Id. But when a jury can understand the medical professional's conduct without technical explanation, expert testimony is unnecessary. Id.

We acknowledge that some medical malpractice actions have survived summary judgment without the requirement of supporting expert testimony in accordance with the "common knowledge" exception. However, those circumstances have primarily arisen where a physician left a foreign object in the patient's body. See Burke v. Capello, 520 N.E.2d 439, 441-42 (Ind. 1998) (recognizing that expert testimony was unnecessary when an orthopedic surgeon failed to remove two pieces of cement totaling one-inch in diameter after affixing a prosthesis for hip replacement); Ciesiolka v. Selby, 147 Ind. App. 396, 261 N.E.2d 95 (1970) (recognizing that the jury did not need expert testimony to conclude that the physician negligently left mesh in the patient's abdomen). In such instances, juries can understand without independent explanation that the object should have been removed.

On the other hand, the mere development of a complication following a medical procedure does not automatically establish a common knowledge exception, as was recognized by this court in Widmeyer. There, a dentist using an electric dental instrument for purposes of cutting a dental bridge before a tooth extraction created a one-centimeter laceration in the patient's tongue that required several sutures. 612 N.E.2d at 1121. The plaintiff argued that the common knowledge exception applied in those circumstances to

establish that the dentist's care fell below the applicable standard of care. Put another way, the plaintiff asserted that a layperson could conclude, without the assistance of expert testimony, that an oral surgeon would not ordinarily lacerate a patient's tongue in the absence of negligence. Id. at 1123. However, this court determined that a jury would lack the independent knowledge and expertise necessary to evaluate the doctor's use of the specific piece of dental equipment at issue. Moreover, we noted that the dentist had specialized training in the procedure that was performed and that the dental instrument he used was not something commonly known or used by laypersons. Id. Hence, we determined, among other things, that the plaintiff failed to set forth sufficient expert testimony in order to create a genuine issue of material fact with regard to the defendant-dentist's negligence. Id.

Like the circumstances in Widmeyer, it is apparent to us that a jury in this case would not possess the independent knowledge and expertise necessary to render an intelligent decision as to whether Dr. Wedig's conduct was negligent. The designated evidence established that the cast-cutting saw that Dr. Wedig used is a very specific piece of equipment that medical personnel utilize in removing plaster casts from patients in hospital emergency rooms. Appellant's App. p. 176. Dr. Wedig was trained in the use of this type of saw in medical school as well as during his emergency medicine residency. Id. Dr. Wedig also possessed knowledge about the potential complications that could arise during the cast removal process, id. at 143, and it could be presumed that he, as a physician, would have learned the proper way to treat such complications. Dr. Wedig set forth the following in his affidavit:

7. While I was removing Ms. Calico's cast, she did express her belief that the saw was cutting her. I attributed this to the fact that the vibrating motion of the cast saw does generate friction heat and some patients will feel a discomfort during the removal process. I stopped and demonstrated to her holding the running saw against my own forearm that the saw does not "cut." When the cast was then removed, however, there was a small linear abrasion on the surface of her skin, very similar to what we might call a "rug burn." The area was not open and was not bleeding. We instructed her to cleanse the area daily with soap and water and to follow up with her orthopedic surgeon. I understand from the medical records that this abrasion subsequently became infected and required medication.

8. . . . It is the standard of care for emergency department physicians to remove a cast using a saw without placing any barrier between the cast and the patient's skin. Nothing about the technique which I used to remove Ms. Calico's cast was unusual.

9. Because of the nature of the cast removal process itself, a skin abrasion is a known, albeit rare, risk of cast removal even utilizing all due care. I applied appropriate technique and equipment when I removed Ms. Calico's cast on March 7, 2002 and it is my opinion that the care I provided to Ms. Calico complied with the applicable standard of care for emergency medicine. It is also my opinion that the subsequent injuries being alleged by Ms. Calico were in no way the result of negligence in the treatment which I provided to her.

Appellant's App. p. 113 (emphasis added).

In considering the above, the determination as to whether Dr. Wedig met the standard of care when treating Calico would require scientific knowledge about the specific tools and the proper technique to be used by an emergency physician during and after a cast removal. It is apparent to us that only those trained in the use of the saw could determine whether it was used appropriately and would be familiar with any risks associated with it. As a result, without the aid of expert testimony, Calico has failed to raise a genuine issue of material fact regarding Dr. Wedig's care.

Even so, Calico further argues that because nurses are commonly involved in the removal of casts, the circumstances here necessarily fall within the "common knowledge" exception. Appellant's Br. p. 9-10. However, it is axiomatic that nurses are trained health care professionals, while laypersons are not. In our view, Calico's mere assertion that a nurse can use a specific piece of medical equipment in the scope of his or her employment simply fails to establish that the same piece of equipment would be familiar—or even accessible—to a member of the general public who does not possess any medical training. To be sure, this court has determined that the "common knowledge" exception requires the existence of conduct "so obviously substandard" that one need not possess medical expertise in order to recognize the breach of the applicable standard of care. Boston v. GYN, Ltd., 785 N.E.2d 1187, 1190 (Ind. Ct. App. 2003) (emphasis added). Expert opinion is required, however, when the question pertains to the delicate interrelationship between a particular medical procedure and the causative effect of that procedure upon a given patient's structure, endurance, biological makeup, and pathology. Malooley v. McIntyre, 597 N.E.2d 314, 319 (Ind. Ct. App. 1992).

When considering the circumstances here, it is apparent to us that the issue of whether Dr. Wedig breached the standard of care is not susceptible of resolution by resort to mere common knowledge. Involved here are the methods of operating a cast-cutting saw, the risks or complications that may be associated with the cast removal process, and the appropriate medical care for any such complication that might arise. In short, such issues are not within the independent knowledge of everyday jurors. Thus, we decline to invoke the "common

knowledge" exception that would otherwise excuse Calico from providing expert testimony to establish Dr. Wedig's alleged negligence. That said, without expert testimony to contradict Dr. Wedig's opinion that the care he provided to Calico met the applicable standard of care, she has failed to raise a genuine issue of material fact in this case.

B. Res Ipsa Loquitur

In the alternative, Calico claims that summary judgment was improperly granted for Dr. Wedig pursuant to the doctrine of res ipsa loquitur. In particular, Calico argues that she has established a genuine issue of material fact because it is apparent that her injury would not have occurred but for Dr. Wedig's negligent use of the saw.

We note that the doctrine of res ipsa loquitur is a qualified exception to the general rule that the mere fact of injury will not create an inference of negligence. Gold, 720 N.E.2d at 1180. This court recently explained this doctrine as follows:

> The doctrine [of res ipsa loquitur] literally means "the thing speaks for itself." Shull v. B.F. Goodrich Co., 477 N.E.2d 924, 926 (Ind. Ct. App. 1985), trans. denied. Res ipsa loquitur is a rule of evidence which permits an inference of negligence to be drawn based upon the surrounding facts and circumstances of the injury. K-Mart Corp. v. Gipson, 563 N.E.2d 667, 669 (Ind. Ct. App. 1990), trans. denied. The doctrine operates on the premise that negligence, like any other fact or condition, may be proved by circumstantial evidence. Id. To create an inference of negligence, the plaintiff must establish: (1) that the injuring instrumentality was within the exclusive management and control of the defendant or its servants, and (2) that the accident is of the type that does not ordinarily happen if those who have the management and control exercise proper care. Id. In determining if the doctrine is applicable, the question is whether the incident more probably resulted from defendant's negligence as opposed to another cause. Id. A plaintiff may rely upon common sense and experience or expert testimony to prove that the incident more probably resulted from negligence. Vogler v. Dominguez, 624 N.E.2d 56, 61 (Ind. Ct. App. 1993), trans. denied. To invoke res ipsa loquitur, the plaintiff must demonstrate that the defendant had exclusive control of the injuring

> instrumentality at the time of injury. Aldana v. Sch. City of E. Chicago, 769 N.E.2d 1201, 1207 (Ind. Ct. App. 2002), trans. denied.

Rector v. Oliver, 809 N.E.2d 887, 889-90 (Ind. Ct. App. 2004), trans.denied.

In considering the above, there is no dispute that Dr. Wedig was the individual who operated the saw to remove Calico's cast. Thus, the first element of Rector is not at issue. Element number two, however, requires Calico to establish through either "common knowledge" or expert testimony that the injury she alleges does not ordinarily occur if proper care is used. Inasmuch as we have determined that the "common knowledge" exception is inapplicable for the reasons stated above, Calico was obligated to present expert testimony on the issue, which she failed to do. Again, Calico failed to provide any expert testimony contradicting Dr. Wedig's expert testimony that injury to the skin of the patient can occur during the use of a cast cutting saw even when a physician is using due care. That said, the fact that Calico alleges to have experienced such a complication does not, by itself, prove negligence. Without expert testimony to the contrary, Dr. Wedig's opinion that the care he provided to Calico met the applicable standard of care is dispositive in this case. Therefore, Calico's claim that she presented a genuine issue of material fact under the doctrine of res ipsa loquitur fails. As a result, we conclude that summary judgment was properly entered for Dr. Wedig.

The judgment of the trial court is affirmed.

SULLIVAN, J., and MAY, J., concur.